IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.
A.O. No. 261/2001
(F.A.F.O. No. 918/1996)

The New India Assurance Co. Ltd.
Haldwani, Nainital through its
Divisional Office, Allahabad …. Appellant.

Vs.

1. Smt. Bhagwati Devi W/o late Keshav Dutt Sanwal R/o Padali P.O. Rati Ghat District Nainital.
2. Km. Hema D/o Keshav Datt (minor)
3. Master Prakash S/o Keshav Datt (minor) Through their guardian Smt. Bhagwati Devi
4. Umesh Chandra Pandey S/o Ishwar Datt Pandey, Pailing Estate, Padmapali District Nainital (owner of the vehicle) …Respondents.

Sri T.A. Khan, learned counsel for the appellant.
Sri G.C. Kandpal, learned counsel for the respondents.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 173 of the Motor Vehicle Act, has been preferred by the insurer of the offending vehicle, against the judgment and award dated 20-8-1996 passed by MACT/II Addl. District Judge Nainital in MACP No. 385 of 1989 Smt. Bhagwati Devi and others and awarding a compensation of Rs. 80,000/- along with interest @ 12% per annum.

2- The facts giving rice to this appeal, in short, are that on 12.5.1989, Keshav Dutt Sanwal was travelling in truck No. U.G.P. 4652 from Bhowali to his village Padali. The truck was being driven at high speed by its driver. When the said truck reached near Leesa Depot Forest Nursery Talla Niglat, the deceased fell down from the truck due to the rash driving but the driver did not stop the vehicle and went towards Garampani. The deceased sustained grievous injuries on his person. He was brought to Bhowali Hospital and thereafter to B.D. Pandey Hospital Nainital where he succumbed to the injuries. The deceased at that time was 38 years of age and was a labourer earning Rs. 900/- per month. The claimants are the widow and children of the deceased.

3- The O.P./owner of the offending truck filed W.S. and alleged that at the time of accident the truck was in a service of Dugdh Utpadan Sahkari Sangh and he had no concerned with it. It was also alleged that the deceased was not travelling in the truck. It was also alleged that the vehicle was insured with New India Assurance Company and the liability of compensation, if any held, is of the insurer.

4- The New India Assurance Company has contested the petition by filing its W.S. with the allegations that the deceased was a gratuitous passenger in the truck hence the claimants are not entitled to receive any compensation.

5- On the pleadings of the parties, the Tribunal framed the following issues:-

1- Whether the deceased was gratuitous passenger in the vehicle No. UGP 4652 at the time of accident?.
2- Whether the accident had occurred due to the negligence of the driver of the vehicle in which the deceased had died?
3- Whether the truck No. UGP 4652 had not involved in the accident, as alleged by the owner of the truck?.
4- Whether the Insurance Company is liable to pay any compensation?.
5- Whether the claimants are entitled to get any compensation?. If so, how much and from whom?.

6- Thereafter parties adduced evidence. The Tribunal after hearing learned counsel for the parties and perusing the evidence on record, awarded compensation for Rs. 80,000/- payable by the insurer. The Tribunal also directed that the compensation be deposited within two months, failing which the interest @ 12% per annum shall be payable.

7- Feeling aggrieved, the New India Assurance Company has preferred this appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

8- Heard learned counsel for the parties and perused the record.

9- Learned counsel for the appellant has argued that the deceased Keshad Datt Sanwal was travelling in the offending truck unauthorizedly and the insurance company cannot be held liable to pay the compensation. It was also submitted that no cogent and reliable evidence was adduced before the Tribunal to establish that the deceased had died due to the rash and negligent driving of the driver of the truck in question. Therefore, the Tribunal committed manifest error in awarding the compensation against the insurer.

10- I find no force in the submissions raised by the learned counsel for the appellant.

11- The claimants have produced Jamuna Datt as P.W.3 as an eye witness of the accident. Jamuna Dutt P.W.3 has deposed that at the time of accident he was going from Naglat to his village on the road side and he saw that the truck No. UGP 4652 was going towards Garampani at a high speed and in a negligent manner. Near Leesa Depot a man fell down from the truck. Raghubar Dutt Tewari, standing at the place cautioned the driver of the truck to stop the vehicle but the driver did not pay any heed to it and rushed the said vehicle towards Garampani at a high speed. The F.I.R. dated 12-5-89 was lodged by Raghubar Dutt at 7.55 P.M. Although truck number was not mentioned in the F.I.R., but P.W.3, Jamuna Dutt has specifically mentioned the number of the offending truck in his deposition. From the side of the opposite parties, no evidence has been adduced to rebut the on oath testimony of this witness. The Tribunal has rightly concluded that the death of deceased Keshav Dutt Sanwal had occurred due to the rash and negligent driving of the driver of the offending truck.

12- Although the owner of the offending truck had taken the plea that the deceased was not travelling in the said vehicle, but no evidence whatsoever has been produced in this regard. It was incumbent upon the opposite parties to either produce the driver of

the truck or other reliable evidence to challenge this fact. On the other hand P.W.3, Jamuna Dutt appears to be independent and reliable witness, who has deposed that Keshav Dutt had fallen from the truck and sustained grievous injuries. Falling from the vehicle by the deceased itself establish that the vehicle was being driven at a very high speed. The aforesaid facts clearly establish that deceased was travelling in the offending truck at the time of the accident. The finding of the Tribunal on the point is just and proper.

13- The deceased Keshad Datt Sanwal at the time of accident was 38 years of age and he was a labourer. The Tribunal assessed the dependency of the claimants at Rs. 900/- per month, i.e. Rs. 10,800/- per annum. Looking to the age of the deceased multiplier of 10 was adopted by the Tribunal cannot be said improper. The Tribunal therefore after deducting 1/3rd towards towards personal expenses of the deceased assessed the dependency at Rs. 72,000/-. The Tribunal also awarded Rs. 5000/- and Rs. 3,000/- towards funeral expenses and loss of affection respectively. In this way the total compensation of Rs. 80,000/- was awarded, which in my view cannot be said exorbitant. The Insurance Company has not denied the insurance of the offending vehicle with it. Therefore, the claimants are entitled to get the amount of compensation from the Insurance Company, along with the interest indicated in the impugned judgment.

14- For the reasons aforesaid, the appeal lacks merit and is liable to be dismissed.

15- Accordingly the appeal is dismissed. The impugned judgment and award is hereby confirmed.

(B.C. Kandpal, J.)

Dated: 21-12-2006
ISB